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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**Finance Docket No. 35582**  
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**PETITION OF RAIL-TERM CORPORATION  
FOR A DECLARATORY ORDER**

**ENTERED  
Office of Proceedings**

**JAN 23 2012**

**Part of  
Public Record**

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**OPPOSITION OF  
AMERICAN TRAIN DISPATCHERS ASSOCIATION  
TO REQUEST FOR A PROCEDURAL SCHEDULE**

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Dated: January 23, 2012

The American Train Dispatchers Association (“ATDA”), a national labor organization whose membership is comprised of individuals employed by rail carriers to dispatch and control the movement of trains over most of the nation’s interstate rail system and the exclusive collective bargaining representative under the Railway Labor Act (45 U.S.C. § 151 *et seq.*) for train dispatcher employees on most of the nation’s major rail carriers, opposes the January 20, 2012, Request of Rail-Term Corp. (“Rail-Term”) that the Board impose a Procedural Schedule and expand the nature of the proceeding contemplated by the U.S. Court of Appeals.

The U.S. Court of Appeals for the District of Columbia Circuit referred this matter to the Board for resolution of one explicit, direct question: “Is Rail Term a ‘rail carrier’ under 49 U.S.C. § 1012(f).” Ex. A to Rail-Term Request. Rail-Term already has explained to the Board why that question should be answered in “no”, and ATDA has explained why the answer should be “yes.” No other entity has appeared in the proceeding either before the Court of Appeals or this Board.

Now, Rail-Term seeks to expand the narrow issue at the root of the referral for the purported sole reason that ATDA’s Opposition “contains arguments that are groundless.” Rail-Term Request at 5. While ATDA’s arguments are solely directed at Rail-Term’s operations, Rail-Term states that it “believes that the STB and the public generally would benefit from further briefing.” *Id.* Rail-Term suggests that its services in connection with interstate transportation cannot be evaluated unless the services of *all* contractors to railroads are considered. Otherwise, Rail-Term says, consideration of its status could lead to “any service provided by a rail industry vendor to a railroad – [being] regarded as a ‘service provided in connection with a facility, instrumentality, or equipment’ rendering the vendor subject to the [Railroad Retirement and Unemployment Insurance] Acts.” *Id.* at 6.

Surely this is folly. The only issue presented by the Court's referral relates to Rail-Term's train dispatching services. This Board can answer that question without expanding its inquiry beyond Rail-Term itself. It is well-experienced in making case-by-case determinations. Any other entity that finds itself possibly affected by this Ruling will have ample opportunity to address the effect, if any, whenever its own status is put at issue. Just as the Railroad Retirement Board has used a case-by-case basis for distinguishing different contractors to railroads in deciding RRRRA coverage questions, so too can this Board.

Rail-Term's shrill response to ATDA's Opposition can only be designed to obfuscate the narrow question the Court asked the Board to answer. There is neither cause nor reason to expand this proceeding based on Rail-Term's overstatement of the breadth of the issue presented. If others had been interested in participating, they would already have so indicated to the Board. They have not done so. There simply is no good reason to prolong this case but setting up formal procedures for public comment and additional briefing as Rail-Term suggests.

For these reasons, Rail-Term's Request should be denied.

### **CONCLUSION**

For these reasons, Rail-Term's Request should be denied. On the record presented, the Board should deny Rail-Term's Petition for a Declaratory Order and hold that Rail-Term is indeed a rail carrier under ICCTA Section 10102(5) subject to the jurisdiction of the Board.

Respectfully submitted,

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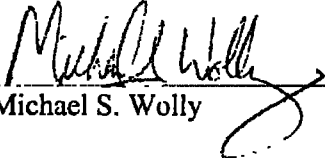
**CERTIFICATE OF SERVICE**

This is to certify that a copy of this Opposition was served upon the following counsel by first class mail, postage prepaid, this 23<sup>rd</sup> day of January, 2012:

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